In the High Court of Punjab and Haryana at Chandigarh

.....

Civil Revision No.6314 of 2006

.....

Date of decision: 28.11.2006

Gojinder Pal Singh and another

.....Petitioners

v.

Jawaharjit Singh and others

.....Respondents

....

Present: Mr. Avnish Mittal, Advocate for the petitioners.

.....

S.S. Saron, J.

This petition under Article 227 of the Constitution of India has been filed for quashing the order dated 6.11.2006 (Annexure-P.2) passed by the learned Additional Civil Judge (Senior Division), S.A.S. Nagar (Mohali). In terms of the impugned order it has been observed that the petitioners despite orders of the Court and despite having given statement through their counsel have failed to restore the electricity connection. In such circumstances, the learned Additional Civil Judge (Senior Division), S.A.S. Nagar (Mohali) has directed the Electricity Department to comply with the order dated 14.6.2006 and to restore the electricity connection after payment, if any, from the plaintiffs-respondents. It has further been directed that in case defendants No.1 and 2 i.e. the petitioners do not appear before the Electricity Department and do not abide by the order dated 14.6.2006, the Electricity Department should restore the previous meter and expenditure

would be paid by the plaintiffs. A further direction has been issued that in case the defendants do not comply with the order dated 14.6.2006, the Electricity Department should restore the previous meter and ensure electricity supply to the respondents as per rules of the Punjab State Electricity Board.

Learned counsel for the petitioners submits that the application that had been filed by the plaintiffs-respondents for alleged breach of the order dated 14.6.2006 has been filed under Section 151 of the Code of Civil Procedure (`CPC' – for short) and not under Order 39 Rule 2-A CPC. Therefore, it is contended that the application was not maintainable. It is further contended that against the order dated 14.6.2006 the petitioners have filed an appeal before the learned District Judge, Ropar which is pending before the learned Additional District Judge, Ropar and the respondents are avoiding their service which is resulting in delay.

After giving my thoughtful consideration to the matter, I find no merit in the same. The order dated 14.6.2006 (Annexure-P.1) was passed by the learned Additional Civil Judge (Senior Division), S.A.S. Nagar (Mohali) in proceedings under Order 39 Rules 1 and 2 read with Section 151 CPC for issuance of temporary mandatory injunction directing the defendants-petitioners to release the electricity connection. The learned trial Court issued directions for the restoration of the electricity connection in favour of the plaintiffs-respondents. Against the order of the learned trial Court appeal is pending. In terms of Order 41 Rule 5 CPC the mere filing of an appeal is not to operate as a stay of the proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a

decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree. Admittedly, the Appellate Court has not granted any interim stay with regard to the implementation of the order dated 14.6.2006 and the matter is to be adjudicated by it. So long as the order dated 14.6.2006 stands the same has to be complied with. The provisions of Order 41 Rule 5 CPC would apply to miscellaneous proceedings also by virtue of Section 141 CPC. Therefore, merely because the application seeking implementation of the order has been styled as an application for taking action against defendant No.1 would not mean that the Court cannot pass an order for enforcing the order which has been passed in favour of a party. The nomenclature under which an application is filed is not quite relevant. It is the substance of the order which has to be complied with. The learned trial Court having passed the order has committed no error of jurisdiction in passing the said order which would warrant interference of this Court in exercise of its powers under Article 227 of the Constitution of India.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed.

November 28, 2006. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes